

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Advanced TelCom, Inc. Request for Waiver
of § 63.71(c) of the Commission's Rules
Comp. Pol. File No. 585

ORDER

Adopted: June 5, 2002

Released: June 6, 2002

By the Chief, Competition Policy Division:

1. In this Order, the Competition Policy Division (Division) of the Wireline Competition Bureau (Bureau) grants Advanced TelCom, Inc., d/b/a Advanced TelCom Group's (ATG) petition for waiver of section 63.71(c) of the Federal Communication Commission's (Commission) rules. Under this rule, a carrier's discontinuance application is normally authorized automatically on the thirty-first (31st) day after the Commission releases public notice of the filing. The thirty-one (31) day period allows the Commission to determine, either through customer comments or its own fact-finding, whether affected customers have available, reasonable alternatives to the service to be discontinued. ATG's petition requests that this period be truncated from 31 to 21 days, allowing the automatic grant to occur on June 7, 2002. Because the purpose and intent of the Commission's notice requirements have been met in this case, we find that granting this waiver is in the public interest.

2. On April 25, 2002, ATG filed an application with the Commission for discontinuance authority to terminate voice and data services to its customers in Maryland and Virginia. On April 26, 2002, ATG notified its affected customers of the proposed action. ATG's discontinuance application states that it informed its customers that they could transfer their service to Cavalier Telephone, LCC (Cavalier), or to any other carrier of their choice. ATG's customer letter also stated that ATG would assist its customers in their transition to a new telecommunications provider.

1 See 47 C.F.R. § 63.71(c).

2 According to its application, ATG states that the proposed discontinuance will affect approximately seven hundred ninety-four (794) business customers in Maryland and one hundred fifty (150) in Virginia.

3 Letter from Richard H. Levin, Attorney, ATG, to Jon Minkoff, Attorney, Wireline Competition Bureau, Federal Communications Commission ( May 14, 2002) (ATG May 14 Ex Parte Letter).

3. Due to delays associated with the new mail inspection procedures that the Commission implemented to protect its employees from potential exposure to anthrax, appropriate staff within the Division did not receive ATG's application until counsel for ATG faxed the application to the Commission on May 13, 2002. Public notice of the discontinuance application was released on May 15, 2002, with comments due on May 29, 2002.<sup>4</sup> Although customers were notified by ATG of the planned discontinuance on April 26, 2002, because the Commission did not place the application on public notice until May 15, under section 63.71 of the Commission's rules,<sup>5</sup> automatic grant of the application would occur no sooner than June 17, 2002, 31 days after release of the public notice.

4. On May 20, 2002, ATG filed a petition to waive section 63.71(c), requesting that the Commission allow ATG's discontinuance application to be automatically granted on June 7, 2002.<sup>6</sup> ATG states in its waiver that it has entered into an agreement to sell portions of its telecommunications equipment, and that the terms of that agreement require that the transaction close no later than June 7, 2002. ATG also states that if section 63.71(c) is not waived, it could be in default under this agreement, and that the equipment's purchaser may be delayed in providing service to its own customers. ATG explains that a delay would immediately cost it an estimated one hundred thousand dollars (\$100,000) in additional operating costs, would jeopardize a transaction worth many times that amount, and could potentially cause its lenders to terminate funding. ATG asserts that granting the petition would serve the public interest because it has "gone the extra mile" to inform its customers of the discontinuance, and, thus, its customers have not been prejudiced. ATG states that it provided its customers with forty (40) days notice – nine (9) more days than required by the rules. In addition, ATG contends that on May 16 and 17, 2002, it mailed a second round of notices, warning customers again of its proposed discontinuance. ATG maintains, moreover, that it established a specially staffed call center to call each affected customer, advising them of ATG's planned discontinuance and offering them assistance in migrating to other carriers. ATG also states that it has received intrastate discontinuance authority from both Virginia's and Maryland's regulatory bodies.<sup>7</sup> One comment was filed with the Commission, but according to ATG, the customer's concerns were resolved.<sup>8</sup>

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<sup>4</sup> See *Comments Invited on Advanced TelCom, Inc. d/b/a Advanced TelCom Group Application to Discontinue Domestic Telecommunications Services*, Public Notice, Comp. Pol. File No. 585, DA 02-1172 (rel. May 15, 2002).

<sup>5</sup> 47 CFR § 63.71.

<sup>6</sup> ATG filed an amendment to the application on May 23, 2002.

<sup>7</sup> See Letter from Donald P. Eveleth, Assistant Executive Secretary, Maryland Public Service Commission to Richard H. Levin, Attorney, ATG (dated May 21, 2002). The letter states that "after considering this matter and the recommendation of its Technical Staff [sic], the Commission hereby rescinds Advanced TelCom, Inc. d/b/a Advanced TelCom Group's operating authority and cancels its tariffs effective June 7, 2002. See also *Petition of Advanced Telecom Group of Virginia, Incorporated d/b/a Advanced Telecom Group for Authority to Cease Operations and Discontinue Telecommunications Services in the Commonwealth of Virginia*, Order, Case No. PUC-2002-00092 (rel. May 22, 2002), stating that ATG is "granted authority to discontinue its provision of local exchange and interexchange telecommunications services provided in Virginia effective June 7, 2002."

<sup>8</sup> On May 20, 2002, Laurel Dingle contacted the Commission, stating that her company, Frederick OB/GYN Professional Group, P.A., needed more time to migrate its service to a new carrier. On May 23, 2002, ATG (continued....)

5. Pursuant to section 1.3 of the Commission's rules, the Commission may grant a waiver of its rules upon a showing of "good cause."<sup>9</sup> Section 1.3, thus, allows the Commission to grant a waiver if special circumstances warrant a departure from the general rule, and that departure serves the public interest.<sup>10</sup>

6. We find that due to the special circumstances present here, a departure from the general rule is warranted, and serves the public interest. First, we believe that granting the waiver is appropriate because the circumstances necessitating ATG's petition are not due to any error or omission on ATG's part. ATG sent a timely and procedurally correct notice to customers, and mailed its application over thirty days ago, ample time to have allowed the Commission, under normal circumstances, to put the application on public notice more than 31 days prior to June 7, 2002. Were it not for the delay caused by the Commission's emergency mail inspection procedure, ATG would not have had to file a waiver request. Thus, we believe that, in the absence of any prejudice to ATG's customers, that its waiver request should be granted.

7. Second, we conclude that no prejudice will result to ATG's customers if the waiver is granted. ATG is only requesting a ten-day reduction in the notice period. As we noted above, ATG mailed notice to its customers almost six weeks ago, and customers have had sufficient notice to file comments. Only one customer filed comments, and that customer's concerns were quickly addressed by ATG. Conversely, we believe that if the waiver is not granted, ATG will default on its agreement, and cause a disruption to the customers of the purchaser of ATG's equipment. The public interest would suffer as a result. Finally, we note that both the Maryland Public Service Commission and the Virginia Corporations Commission have already approved ATG's intrastate discontinuance applications.<sup>11</sup>

8. We emphasize that we are granting the waiver on the specific facts of this case. Where customers would actually lose service if a discontinuance were allowed to go into effect, we would not necessarily reach the same conclusion.<sup>12</sup>

9. Accordingly, IT IS ORDERED that pursuant to Sections 1, 4(i) and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 214, and Sections 0.91, 0.291, 1.3 and 63.71 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 63.71, section

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reported to the Commission that it had received a Firm Order Commitment from Verizon to migrate the complainant's service on May 30, 2002.

<sup>9</sup> 47 C.F.R. § 1.3.

<sup>10</sup> See *Northeast Cellular Telephone Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 US 1027 (1972)); see also *Industrial Broadcasting Co. v. FCC*, 437 F.2d 680, 683 (D.C. Cir. 1970).

<sup>11</sup> See n.7, *supra*.

<sup>12</sup> See *In the Matter of Rhythms Links Inc. Emergency Application to Discontinue Domestic Telecommunications Services*, Order, NSD File No. W-P-D-523 (Sept. 7, 2001).

63.71(c) of the Commission's rules IS WAIVED to the extent that ATG may discontinue providing service on June 7, 2002, absent any further comments from affected customers, or further action by the Commission.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey  
Chief, Competition Policy Division  
Wireline Competition Bureau